

wherein the stopper includes a flap having a portion of the flap removable secured to the body portion of the cover and a remaining portion of the flap that removably fills the opening.

Please cancel claim 2 without prejudice or disclaimer.

#### REMARKS

In response to the Office Action mailed January 2, 2003, Applicants respectfully request reconsideration. Claim 1 is amended herein, and claim 2 has been cancelled. Claims 1 and 3-35 are now pending in this application, of which claims 1, 17 and 35 are independent claims. The application as presented is believed to be in allowable condition.

#### A. Rejection under 35 U.S.C. §112

The Office Action rejects claim 13 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants respectfully traverse this rejection.

Claim 13 recites "wherein the stopper includes a flap having a portion of the flap attached to the handle and a remaining portion of the flap that removably fills the opening." The Office Action states that it is unclear how the remaining portion of the flap fills the opening if the stopper already closes the opening and the remaining portion of the flap has been distinguished from the stopper. Applicants respectfully disagree. Claim 1 recites, *inter alia*, "a stopper movable between an open position and a closed position, the stopper adapted to close the opening when in the closed position." Claim 13 further defines the stopper, stating that the stopper "includes a flap having a portion of the flap attached to the handle and a remaining portion of the flap that removably fills the opening." Thus, claim 13 defines a stopper having a particular structure, and states that it is a certain portion of the stopper, namely the remaining portion of the flap, that closes the opening. Claim 13, as presented, is believed to be clear enough to satisfy the statute. Accordingly, withdrawal of the rejection of claim 13 is respectfully requested.

B. Rejections Under 35 U.S.C. §102

The Office Action states that claims 1-35 are rejected under 35 U.S.C. §102(b) as being disclosed by the Applicants more than one year before the filing of the application. Applicants respectfully traverse this rejection.

Claim 2 has been cancelled and thus the rejection is moot with respect to claim 2.

The Examiner cites CORNINGWARE® FRENCH WHITE Cookware, Corningware Housewares Catalog 1999, pp. 1-4 (IDS Cite No. BJ) as publishing and/or offering for sale the present application. This document was inadvertently cited in Applicants' May 7, 2002 Information Disclosure Statement bearing an incorrect date, as the front page mistakenly includes an incorrect handwritten date of 1999. These pages 1-4 were in fact copied from Applicants' Oven/Bakeware Catalog of 2001 and not from the Corningware Housewares Catalog of 1999. Applicants have submitted herewith a supplemental IDS including complete copies of Applicants' 1999, 2000, 2001 and 2002 catalogs. Applicants have also submitted herewith a Declaration under 37 C.F.R. §1.132 stating that the present application was not advertised in a catalog prior to the 2001 Oven/Bakeware catalog or offered for sale until 2001, and that the pages 1-4 in question are in fact copies of pages 1-4 of the Oven/Bakeware Catalog of 2001. Therefore, the CORNINGWARE® FRENCH WHITE NEXT GENERATION OPEN STOCK Cookware illustrated on page 4 of Applicants' 2001 catalog, including product nos. 1039819, 1039815, 1039817, 1039816 and 1039818, are not prior art to the present application under §102(b). Accordingly, withdrawal of the rejection of claims 1 and 3-35 under 35 U.S.C. § 102(b) is respectfully requested.

The Office Action further rejects claims 1-3 and 8-16 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,762,228 to Morgan (Morgan). Applicants have amended claim 1 to further distinguish over Morgan, and respectfully traverse the rejection.

Claim 2 has been cancelled and thus the rejection is moot with respect to claim 2.

Morgan discloses a vent assembly for use with food storage containers, the vent assembly being integrally formed and recessed within the top sealing panel of the container, and capable of accommodating pressure changes within the container, particularly at extreme temperature ranges. (Morgan, col. 1, lines 40-60). Referring to Figs. 1 and 2, Morgan discloses that the vent assembly 16 comprises an upwardly open depression or recess 26 formed in the panel 18,

entirely below the planar outer surface 22 of the panel 18. The vent assembly 16 includes a sloping bottom 28 divided by an integral elongate hinge component 30 extending upward from the bottom 28. The hinge component 30 divides the recess 26 into two opposed substantially equal sections. A substantially conical upwardly directed hollow stem 36 is integrally formed with the bottom 28 in one section of the recess 26 and defines a vent opening or hole 38 which provides direct communication through the seal panel 18. (Morgan, col. 3, lines 16-40). A vent cover 56 substantially conforms to the configuration of the open end of the recess 26 and is slightly smaller to enable a vertical rocking movement of the cover 56 within and relative to the recess on the hinge component 30. (Morgan, col. 4, lines 3-8). A first part of the cover 56 which overlies the vent hole 38 includes a depending integrally formed plug 66 to sealingly engage with the vent hole 38 in a closed position. Pressure on a second part of the cover 56, which overlies the relatively deeper section 34 of the recess 26 defined by the sloping bottom 28, will cause the cover 56 to rock on the hinge component 30 and disengage the sealing plug 66 of the first part to open the vent hole 38, as illustrated in Fig. 4. (Morgan, col. 4, lines 41-65).

Applicants' claim 1, as amended, recites "a stopper movable between an open position and a closed position, the stopper adapted to close the opening when in the closed position, wherein the stopper includes a flap having a portion of the flap removably secured to the body portion of the cover, and a remaining portion of the flap removably fills the opening." In contrast, Morgan discloses a sealing disk, vertically rockable within a recess to open and seal the opening. Morgan does not disclose that the sealing disk is removable from the body portion of the cover, nor that the sealing disk includes a flap portion.

Moreover, Applicants' claim 1 recites that the stopper "allows the cover to be removed from the container when the stopper is in the open position by releasing the air-tight seal." In contrast, when the vent hole 38 of Morgan is opened, the pressure in the container is released without disrupting the seal between the cover and the base. Thus, when the vent hole 38 of Morgan is opened, the air-tight seal is not released and the secure relationship between the cover and container is maintained until manually removed. (Morgan, col. 1, lines 49-57). Morgan fails to disclose or suggest that a stopper releases the air-tight seal between a cover and container.

Therefore, for at least these reasons, Morgan does not anticipate independent claim 1, as amended. Accordingly, withdrawal of the rejection of claim 1 is respectfully requested.

The Office Action also rejects claims 17-21, 23-25, 27-30, 34 and 35 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication No. US 2002/0066732 to Ogino (Ogino). Applicant respectfully traverses this rejection.

Ogino discloses a food preservative container comprising a container body and a closure member fitted over the container body so as to close an opening of the containing body, the closure member having a peripheral edge that can be hermetically fitted to the container body. (Ogino, p. 1, para. 2). Referring to Fig. 1, Ogino discloses that the closure member 3 has an attached finger gripper portion 16, and is configured to fit over the container body 2 so as to close an opening 2a of the container body 2. (Ogino, p. 2, para. 48). By contrast, Applicants' independent claim 17 recites "wherein the outer edge of the cover is adapted to fit adjacent a portion of the inner surface of the side wall of the containing portion." Ogino does not disclose a structure wherein the cover fits adjacent an inner surface of the side wall of the containing portion because Ogino's cover fits over the containing portion, not inside it. Therefore, for at least these reasons, Ogino does not anticipate independent claim 17, and withdrawal of the rejection of claim 17 is respectfully requested.

Similarly, Applicants' independent claim 35 recites "wherein the outer edge of the cover is adapted to fit against a portion of the inner surface of the side wall of the containing portion." As discussed above, Ogino discloses that the cover fits over the containing portion, and thus does not disclose that the outer edge of the cover fits adjacent an inner surface of the side wall of the containing portion. Therefore, for at least these reasons, Ogino does not anticipate independent claim 35. Accordingly, withdrawal of the rejection of claim 35 is respectfully requested.

Each of dependent claims 3, 8-16, 18-21, 23-25, 27-30 and 34 depend, either directly or indirectly, from one of independent claims 1 and 17 discussed above and are therefore allowable for at least the same reasons as their respective base claim. Accordingly, for the sake of brevity, Applicants do not argue the allowability of each dependent claim individually at this time. However, Applicants do not agree that the basis for rejection of any dependent claim is proper and specifically reserve the right to argue the patentability of each dependent claim individually in the future, if deemed necessary. Accordingly, withdrawal of the rejection of dependent claims 3, 8-16, 18-21, 23-25, 27-30 and 34 is respectfully requested.

C. Rejections Under 35 U.S.C. §103

The Office Action rejects claims 1-6 and 8-16 under 35 U.S.C. §103(a) as being unpatentable over Morgan in view of Ogino. Applicants respectfully traverse this rejection.

Claim 2 has been cancelled and thus the rejection is moot with respect to claim 2.

As discussed above, Morgan does not disclose or suggest “a stopper, wherein the stopper includes a flap having a portion of the flap removably secured to the body portion of the cover and a remaining portion of the flap that removably fills the opening,” as is recited in Applicants’ amended claim 1. Similarly, Ogino fails to disclose or suggest such a stopper and therefore fails to cure the deficiencies of Morgan. Instead, Ogino discloses a container 1 including a closure member 3 that fits over a container body 2 to close an opening 2a of the container body 2. A finger grip portion 16 is provided on the closure member 3. When a grip outer cover portion 38 of the finger grip portion 16 is squeezed a lower part 40 detaches from the closure member 3 to release the seal between the closure member 3 and container body 2. Ogino simply fails to disclose or suggest a stopper including a flap as claimed in independent claim 1. Thus, although Applicants do not agree that the combination of Morgan and Ogino set forth in the Office Action is proper, even if one were to make the asserted combination, independent claim 1 patentably distinguishes over the asserted combination. Accordingly, withdrawal of the rejection of claim 1 is respectfully requested.

The Office Action further rejects claims 1-16 under 35 U.S.C. §103(a) as being unpatentable over Morgan in view of Ogino and in further view of U.S. Patent No. 6,364,152 to Poslinski (Poslinski). Applicants respectfully traverse this rejection.

As discussed above, Applicants’ claim 1 patentably distinguishes over the asserted combination of Morgan and Ogino. Poslinski fails to disclose or suggest a stopper that “includes a flap having a portion of the flap removably secured to the body portion of the cover and a remaining portion of the flap that removably fills the opening,” as is recited in amended claim 1. Instead, Poslinski discloses a lid 14 including latch prongs 54 on the main body 24 of the lid 14 at peripherally spaced locations aligned with apertures 52 in the sealing flange 22 of the base 12. (Poslinski, col. 4, lines 40-55). The latch prongs 54 mechanically retain the lid 14 on the base 12. Poslinski simply fails to disclose any stopper. Thus, Poslinski fails to cure the deficiencies of Morgan and Ogino. Therefore, although Applicants do not agree that the asserted

combination of Morgan, Ogino and Poslinski is proper, even if one were to make the asserted combination, independent claim 1 patentably distinguishes over the combination. Accordingly, withdrawal of the rejection of claim 1 is respectfully requested.

Each of dependent claims 3-16 depends, either directly or indirectly from claim 1 and is therefore allowable for at least the same reasons as claim 1. Accordingly, withdrawal of the rejections of dependent claims 3-16 is respectfully requested.

The Office Action rejects claims 17-30 and 34 under 35 U.S.C. §103(a) as being unpatentable over Ogino in view of Poslinski. Applicants respectfully traverse this rejection.

As discussed above, Ogino does not disclose or suggest a container “wherein the outer edge of the cover is adapted to fit against a portion of the inner surface of the side wall of the containing portion,” as is recited in Applicants’ independent claim 17. Poslinski fails to cure the deficiencies of Ogino. Poslinski discloses a base 12 and a lid 14. The lid 14 includes a main body 24 with a peripheral edge 26. When the lid covers the base, the peripheral edge 26 extends over an upper rim 20 of the sidewalls of the base 12. (Poslinski, col. 2, lines 32-58, Figs. 1-2). Thus, Poslinski fails to disclose or suggest an outer edge adapted to fit against an inner surface of the containing portion. Therefore, although Applicants do not agree that the suggested combination of Ogino and Poslinski is proper, even if one were to make the suggested combination, independent claim 17 patentably distinguishes over the combination. Therefore, withdrawal of the rejection of claim 17 is respectfully requested.

Each of dependent claims 18-30 and 34 depends, either directly or indirectly, from claim 17 and is therefore allowable for at least the same reasons as claim 17. Accordingly, withdrawal of the rejection of claims 18-30 and 34 is respectfully requested.

The Office Action also rejects claims 17 and 30-33 under 35 U.S.C. §103(a) as being unpatentable over Ogino in view of Morgan. Applicants respectfully traverse this rejection.

As discussed above, Ogino does not disclose or suggest a container “wherein the outer edge of the cover is adapted to fit against a portion of the inner surface of the side wall of the containing portion,” as is recited in independent claim 17. Similarly, Morgan fails to disclose or suggest this feature, and thus fails to cure the deficiencies of Ogino. Morgan discloses a conventional seal 14 with a base-covering top panel 18 and an integral mounting flange 20 snap-locked to the rim of the base 12. (Morgan, col. 3, lines 4-11). As can be seen in Figs. 1 and 3,

the outer edge of the seal 14 fits over the base 12. Thus, Morgan fails to disclose or suggest an outer edge of a cover adapted to fit against an inner surface of the containing portion. Therefore, although Applicants do not agree that the suggested combination of Ogino and Morgan is proper, even if one were to make the suggested combination, independent claim 17 patentably distinguishes over the combination. Therefore, withdrawal of the rejection of claim 17 is respectfully requested.

Dependent claims 30-33 depend from claim 17 and are therefore allowable for at least the same reasons as claim 17. Accordingly, withdrawal of the rejection of claims 30-33 is respectfully requested.

#### D. Conclusion

In view of the foregoing amendments and remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicants' attorney at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicants hereby request any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,

*Klock et al., Applicants*



By: \_\_\_\_\_

Randy J. Pritzker, Reg. No. 35,986  
Kristin D. Wheeler, Reg. No. 43,583  
Wolf, Greenfield & Sacks, P.C.  
600 Atlantic Avenue  
Boston, Massachusetts 02210-2211  
Telephone: (617) 720-3500

Date: April 2, 2003  
x04/02/03

**MARKED-UP CLAIMS**

Claim 2 has been canceled without prejudice or disclaimer.

Claim 1 has been amended as follows:

1. A cover comprising:
  - a body portion substantially surrounded by an outer edge, the body portion having an opening therein; and
  - a stopper movable between an open position and a closed position, the stopper adapted to close the opening when in the closed position;
  - wherein the stopper causes a substantially air-tight seal between the cover and a container when in the closed position, and allows the cover to be removed from the container when the stopper is in the open position by releasing the air-tight seal; and
  - wherein the stopper includes a flap having a portion of the flap removable secured to the body portion of the cover and a remaining portion of the flap that removably fills the opening.